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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,746	03/05/2002	Ute Griesbach	CU-2652 RJS	8970

7590

10/29/2003

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EXAMINER

MAIER, LEIGH C

ART UNIT	PAPER NUMBER
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1623

DATE MAILED: 10/29/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/936,746

Applicant(s)

GRIESBACH ET AL.

Examiner

Leigh C. Maier

Art Unit

1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 16 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-28 is/are pending in the application.
- 4a) Of the above claim(s) 17-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Status of the Claims

Claims 1-10 have been canceled. Claims 11-28 have been added. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Newly submitted claims 17-28 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Original claims 1-9 were directed to a composition, and original claim 10 was a "use" claim that appeared to correspond to a method of preparing said compositions. However, the newly added claims 17-28 are directed toward two separate therapeutic methods of using the recited compositions.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 17-28 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims depend from canceled claim 1, thus rendering the claims vague and indefinite.

Claim Rejections - 35 USC § 103

Claims 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over ZULLI et al (US 6,342,486) in view of WEITKEMPER et al (US 6,444,659) as applied to original claims 1 and 5-9 set forth in the previous Office action.

The invention is as set forth in the previous Office action. As noted above, claims 12-16 are made indefinite by being dependent on a canceled claim. However, these claims are being examined on the assumption that the “1” in the claims is a typographical error, and that “11” was intended.

Applicant's arguments filed June 16, 2003 have been fully considered but they are not persuasive.

Applicant contends that ZULLI discloses a glucan that is different than the claimed invention. The examiner disagrees with the characterization of the claim. Claim 11 recites generic “glucans” and generic “chitosans.” Dependent claims recite various chitosan derivatives. Therefore, a fair reading of the claims would not preclude derivativatized glucans.

Applicant argues that WEITKEMPER only states that chitosans are “capable of interacting with oppositely charged surfaces and are therefore used in cosmetic hair care and body-care products.” The examiner agrees. The fact that the reference teaches that chitosans have utility in the preparation of cosmetic preparations is sufficient to provide one of ordinary skill with motivation to combine chitosan with glucan, also having utility for preparing cosmetic compositions.

Art Unit: 1623

Applicant further points to data in the disclosure that purport to demonstrate a synergistic effect for the combination of glucan and chitosan. These data were discussed in the previous Office action. The data were found to be insufficient evidence of synergy because the subjects were not matched at the start in order to have fair comparisons. However, even if, for the sake of argument, one were to accept Applicant's position that this type of comparison is adequate, it is noted that the results for comparative Example V1 (no chitosan) provide essentially the same results as Examples 1 and 2 (compositions of the invention).

Finally, Applicant comments on the LEUBA and TESLENKO references. The examiner reiterates that these references were used only to indicate the state of the art at the time of the invention and not used in the rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 1623

Examiner's hours, phone & fax numbers

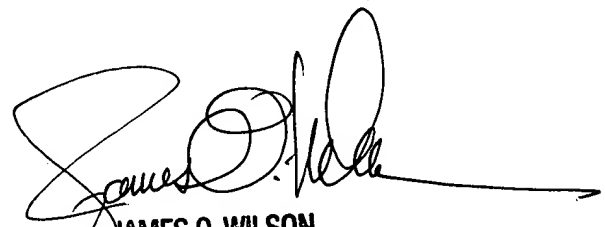
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh Maier whose telephone number is (703) 308-4525. The examiner can normally be reached on Tuesday, Wednesday, or Friday 7:00 to 3:30 (ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. James O. Wilson (703) 308-4624, may be contacted. The fax number for Group 1600, Art Unit 1623 is (703) 308-4556 or 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-1235.

Visit the U.S. PTO's site on the World Wide Web at <http://www.uspto.gov>. This site contains lots of valuable information including the latest PTO fees, downloadable forms, basic search capabilities and much more.

Leigh C. Maier
Patent Examiner
October 21, 2003



JAMES O. WILSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600